

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 581 - SB 1186

February 28, 2015

SUMMARY OF BILL: Increases the penalty for trafficking for commercial sex acts when the victim is between the ages of 15 and 18.

Creates affirmative defenses for trafficking for commercial sex acts if one is a victim of trafficking for commercial sex acts or one acted under duress.

Prohibits the defense to a violation that the victim is a law enforcement officer or the victim is a minor and consented.

Requires that an offender be punished within Range II.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$93,000 Highest Projected Cost of the Next 10 Years/Incarceration*

Assumptions:

Assumptions Relative to Criminal Defenses:

- Under current law, consent is not a defense to trafficking for commercial sex acts or patronizing prostitution. Expressly prohibiting the defense by statute will not impact the number of admissions into state correctional facilities.
- Under current law, it is not a defense to trafficking for commercial sex acts or patronizing prostitution that the subject of the offense is a law enforcement officer. Expressly prohibiting the defense by statute will not impact the number of admissions into state correctional facilities.

Assumptions Relative to Trafficking for Commercial Sex Acts:

- Under current law, trafficking for commercial sex acts is punishable as a Class B felony unless the act was committed within 100 feet of a school or the victim was less than 15 years of age which is a Class A felony. The bill would make it a Class A felony if the victim is under 18 years of age.
- The Class A felony for trafficking for commercial sex acts of a child under 15 years of age was codified by Pub. Ch. 1075 of 2012. The fiscal note for that public chapter estimated one admission every three years, which would result in estimated incarceration costs of \$73,000 per year.

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- Statistics from the Administrative Office of the Courts shows there have already been two Class A felony convictions, occurring in 2014. It is assumed that over the next 10 years, there will be at least one Class A felony admission per year.
- It is assumed that broadening the Class A felony to include any victim under 18 years of age will result in one additional Class A felony every three years.
- There is insufficient data on the average time served for trafficking for commercial sex act because the offense was only enacted in 2012. It is assumed that the average offender convicted under the current law, a Class B felony, serves the same time as an average Class B felony, 5.69 years. The bill enhances trafficking for commercial sex acts against a person under 18 years of age to a Class A felony and requires the offender be punished within Range II, which could result in a sentence between 25 and 40 years. Under Range II, the offender must serve at least 40 percent of the sentence received.
- It is assumed that the offender will serve a term that falls in the middle of Range II, 32.5 years, and serve 40 percent of the sentence, 13 years (32.5×0.4).
- The bill will result in one Class B felony every three years being enhanced to a Class A felony and serving an additional 7.31 years ($13 - 5.69$).
- Population growth and recidivism discount factors do not apply because of the low number of admissions affected by this provision of the bill.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving an additional 7.31 years (2,669.98 days) for an annualized total of \$58,766 [$(\$66.03 \times 2,669.98 \text{ days})/3 \text{ years}$].
- The bill also requires every person convicted of trafficking for commercial sex act to be punished within Range II. Statistics from the Administrative Office of the Courts shows a three-year average of 4.33 admissions per year.
- There is insufficient data on the average time served for trafficking for commercial sex act because the offense was only enacted in 2012. It is assumed that the average offender will serve the same time as an average Class B felony, 5.69 years.
- Under Range II, the offender must serve at least 40 percent of the sentence received.
- The bill would require these offenders to be punished within Range II, which could result in a sentence between 12 and 20 years. It is assumed that the offender will receive a sentence in the middle of Range II, 16 years, and serve 40 percent of that sentence, 6.4 years (16×0.4).
- The bill will result in each offender serving an additional 0.71 years ($6.4 - 5.69$).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- According to the DOC, 49.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($4 \text{ offenders} \times .491 = 2 \text{ offenders}$).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders [4 offenders – 2 (recidivism discount)] serving an additional 0.71 years (259.33 days) for a total of \$17,124 (\$66.03 x 259.33 days). The cost for two offenders is \$34,248 (\$17,124 x 2).

Assumption Relative to the Cumulative Impact:

- The total cost of incarceration is \$93,014 (\$58,766 + \$34,248).

Assumption Relative to District Attorneys, Public Defenders, and the Courts:

- The bill will not create any new cases, but only affect the sentences of offenders. Any impact to the operations of the District Attorneys General Conference, the District Public Defenders Conference, or the Administrative Office of the Courts can be accommodated within existing resources without any additional appropriations.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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